

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1511.00
COMPLAINT INVESTIGATOR: Roger Hubbard
DATE OF COMPLAINT: January 11 , 2000
DATE OF REPORT: February 8, 2000
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: March 28, 2000

COMPLAINT ISSUES:

Whether the MSD of Decatur Township and the RISE Special Services violated:

- 511 IAC 7-6-2(c) with regard to the school's alleged failure to ensure that personnel providing services at the beginning of the 1999-2000 school year were appropriately licensed or certified to provide special education services;
- 511 IAC 7-3-50 with regard to the school's alleged failure to ensure the student's teacher of record is appropriately licensed;
- 511 IAC 7-10-3(r) with regard to the school's alleged failure to notify the parent, upon the triennial reevaluation of the student, of one of the following: (1) that a case conference committee (CCC) would be convened to discuss the reevaluation results; (2) that the parent had the right to request that a CCC be convened; or (3) that unless otherwise requested by the parent or the school, the reevaluation results would be reviewed at the student's annual case review;
- 511 IAC 7-12-1 with regard to the school's alleged failure to implement the student's individualized education program (IEP) as written, specifically:
 - a. requiring the student to retake a test for material for which the student was not to be held accountable,
 - b. failing to provide special instruction for subjects specified;
 - c. pulling the student out of a general education class that the IEP state was to attend;
 - d. failing to ensure that the substitute teachers implemented the IEP in the teacher's absence; and
 - e. failing to implement the student's IEP on the days other student's were involved in ISTEP testing.
- 34 CFR 300.345(a)(6) and (c) with regard to the school's alleged failure to permit a parent to bring an individual to the CCC whom the parent had determined had special knowledge or expertise about the student.

FINDINGS OF FACT:

1. The student (the Student) is in the fourth grade and is eligible for special education and related services as a student with a learning disability.
2. At the beginning of the 1999-2000 school year, the teacher for students with a learning disability was absent for seven consecutive instructional days. The school did not provide a substitute teacher, and the Student did not receive services for seven days. The Student missed a total of

450 minutes of service. The Student is receiving an additional 20 minutes of assistance per week in math and language arts which totaled 480 minutes of additional services as of January 21, 2000.

3. The Student's teacher of record is licensed in the state of Indiana in the area of general elementary and learning disability.
4. The parent received notice on September 30, 1999, that the triennial reevaluation had been completed. The notice states that the results will be reviewed at the time of the Annual Case Review to be held in January 2000. It also notified the parent of the right to request a case conference prior to the annual case review to review the test results. A case conference was held on October 4, 1999, at the request of the parent to discuss the Student's reading. A case conference was reconvened on October 14, 1999, to discuss the test results with the school psychologist and the CCC members.
5. At the Student's request the science teacher included him in the test and retest and was given a "non-mastery." The teacher was made aware that the Student is not to be tested and held accountable for the material presented, and the IEP is to be followed even if the student requested something different.
6. The school admits that the Student was being pulled from a general education class to receive part of the pullout services he was to receive from the learning disability teacher. The teacher has rearranged her schedule to deliver all of the pullout services at times that will not interfere with the Student's IEP.
7. The school admits that there have been times when they were unable to secure a substitute teacher for the learning disability teacher.
8. The school admits that the Student was placed with the in-school suspension teacher during ISTEP testing. The school also states that the Student was made aware the he was not being suspended and this was not considered a disciplinary action. The learning disability teacher and other special education staff were involved in implementing IEP adaptations for other special education students.
9. The school admits that they informed the parent that she could not bring an attorney to the conference under the auspices of possible legal action against the school. The school insists that there was no mention of the attorney having any special education knowledge or expertise related to the Student. The parent indicated that she wanted the attorney present to ensure that the Student's rights were not being denied.

CONCLUSIONS:

1. Finding of Fact #2 indicates that the school failed to provide a substitute teacher in the absence of the learning disability teacher at the beginning of the 1999-2000 school year, thereby failing to provide services to the Student for seven instructional days. Therefore, a violation of 511 IAC 7-6-2(c) is found.
2. Finding of Fact #3 indicates that the Student's teacher of record is appropriately licensed. Therefore, no violation of 511 IAC 7-3-50 is found.
3. Finding of Fact #4 indicates that the parent received notice that the triennial evaluation had been completed. The form stated that the results would be reviewed at the annual case review. It also

notified the parent of the right to request a case conference prior to the annual case review. A CCC meeting was held on October 4, 1999, at the parent's request, to discuss the Student's reading. The CCC was reconvened on October 14, 1999, whereby the results of the reevaluation were discussed. Therefore, no violation of 511 IAC 7-10-3(r) is found.

4. Findings of Fact #5, #6, #7, and #8 indicate that the Student was given a test and required to retest when he is not to be held accountable for the material presented, that the Student was being pulled from a general education class to receive pullout services, that the school failed on occasions to secure a substitute teacher for the learning disability teacher, and that the school placed the Student into in-school suspension during ISTEP testing and failed to implement the Student's IEP. Therefore a violation of 511 IAC 7-12-1 is found.
5. Finding of Fact #9 indicates that the school informed the parent that she could not bring an attorney to the CCC meeting under the auspices of legal action against the school. The parent insists that the attorney would be present to ensure the Student's rights. Therefore, a violation of 34 CFR 300.345(a)(6) and (c) is found.

The Department of Education, Division of Special Education requires corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The MSD of Decatur Township and the RISE Special Services shall:

1. develop a system which will ensure that a student will continue to receive services in the absence of personnel charged with providing the service. A procedure detailing this method shall be provided to the Division by March 17, 2000.
2. provide in-service training to all special education staff and building administrators regarding the appropriate implementation of IEP's and information regarding who can attend CCC meetings. The training materials shall be submitted to Division by March 8, 2000, prior to the actual training session. This training will take place by March 22, 2000, with copies of attendance rosters and participants handouts provided to the Division by March 17, 2000.